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91-1270

Supreme Court, U.S.
FILED
FEB 4 1992
OFFICE OF THE CLERK

No. ___

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

ANN RICHARDS, Governor of Texas, et al.,
Appellants,

v.

LOUIS TERRAZAS, et al., *Appellees*..

On Appeal from the United States District Court for the Western District of Texas

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MOTION FOR EXPEDITED CONSIDERATION OF JURISDICTIONAL STATEMENT

Ann Richards, Dan Morales, and John Hannah, Jr., respectively the Governor, the Attorney General, and the Secretary of State of Texas (appellants herein and hereinafter collectively termed "the state"), hereby move the Court to expedite its consideration of the jurisdictional statement filed in this appeal. Specifically, the state moves for immediate distribution of its jurisdictional statement (filed simultaneously with this motion) by the Clerk to the Court for its consideration without awaiting appellees' responses. The grounds follow:

1. This appeal seeks to reverse a divided three-judge district's court preliminary injunction order of January 10, 1992, compelling the state to use an interim court-ordered redistricting plan for the 31-member Texas Senate instead of a legislatively

approved plan (called Senate Bill 1) which has received administrative preclearance pursuant to section 5 of the Voting Rights Act.

2. The appealed district court injunction by its terms applies only to the 1992 party primaries. Under the court order, those primaries must go forward on March 10, 1992. Under Texas law, personal appearance early voting for the March 10th primary (a form of absentee voting) commences on February 19, 1992.

3. The Jurisdictional Statement enumerates two glaring deficiencies in the court-ordered plan for the rapidly approaching state Senate primary. The two-member majority's January 10th order completely disregards federalism-based restraints on federal courts. It rushes to supplant a precleared legislative plan with a court-ordered plan which has not been precleared, has not been examined in an evidentiary hearing, and which violates (without explanation) the population deviation limits imposed by the constitutional one-person, one-vote standard.

4. Additionally, remarkable and highly disturbing information has come to light within the last day which casts such a pall over the court-ordered plan as to vitiate it as a viable court order. A member of the Texas House of Representatives (who voted against Senate Bill 1) testified under oath in a deposition on February 3, 1992, that one of the panel members of the district court -- Judge James Nowlin -- telephoned him *ex parte* at his home on the morning of December 23, 1991, requesting that he (the Representative) help the judge's law clerks that day work on the Senate redistricting plan which the district court was developing. The Representative further testified that he did so with specific attention to the Senate district in which

he planned to seek a Senate seat. The next day, December 24, 1991, the divided district court first ordered the state to use the court-ordered plan for the Texas Senate in its 1992 primary elections. In other words, unbeknownst to the state and without any notice, a state representative helped the district court draw at least a portion of the court-ordered Senate plan which has been imposed on the state in lieu of its own legislatively-approved, administratively precleared plan. (Excerpts from the deposition are attached and incorporated.)

5. As revealed in paragraph 2, above, the time for the Court's action on the state's Jurisdictional Statement is extremely short. The plan forming the subject of this appeal is subject to grave infirmities, both of a legal and an ethical nature going to the integrity of the judicial process. Permitting the March 10th Senate primary elections to go forward under the circumstances here, with the growing indications of a corrupted judicial process, would constitute the gravest of offenses in the annals of voting rights law to the historic rights of states to choose their own systems of governance. Only exceedingly prompt action by this Court can restore order and fairness to the process; only exceedingly prompt action by this Court can avert the disaster to federalism which will occur if the challenged court-ordered Senate plan remains in place for the primary which is only a month away. Wholly independent of the questionable atmosphere surrounding the court-ordered plan, there are strong legal grounds for invalidating it. The state urges the Court to act on them as soon as possible.

For the foregoing reasons, the state urges the Court to expedite its consideration of the Jurisdictional Statement.

Respectfully submitted,

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February 4, 1992

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

LOUIS TERRAZAS, ET AL, Plaintiffs	*	
	*	Civil Action Nos.
VS.	*	A-91-CA-425
	*	A-91-CA-426
BOB SLAGLE, ET AL, Defendants	*	A-91-CA-428

ORAL DEPOSITION OF GEORGE B. PIERCE

February 3, 1992

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(Appearances Continued)

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* * * * * * * * * *

DEPOSITION UPON ORAL EXAMINATION of the witness, GEORGE B. PIERCE, in answer to questions propounded to him in the above numbered and styled cause, taken on behalf of the Defendants before EDWARD Y. ESTRADA, a Certified Shorthand Reporter for the State of Texas, in the offices of Federal Court Reporters, 100 N.E. Loop 410, Suite 575, San Antonio, Texas, on the 3rd day of February, 1992, between the hours of 2:00 p.m. and 5:00 p.m., pursuant to Notice and the Federal Rules of Civil Procedure.

* * * * * * * * * *

Q. Okay, December. If you're using the work station, then at least two people will see you -- at least the receptionist and operator; is that correct?

A. I would think that's right.

Q. Are you familiar with a woman named Tina Hankst?

A. I have met Tina Hankst, yes.

Q. And who is she?

A. She is an operator.

Q. What about a Bryan Murdock? Are you familiar with a Bryan Murdock?

A. No I'm not.

Q. What about a Richard VanHaught? Are you familiar with him?

A. No, I'm not.

Q. Did you ever request a specific operator?

A. No.

Q. Now, you've told us who had access to your account. Were you ever given access to any account other than your own?

A. No.

Q. Were you ever allowed to view the Court's account?

A. Yes.

MR. BROWN: Counsel, what do you mean by the Court's account? Are you talking about the United States District Court in the Terrazas Versus Slagle case?

Q. (BY MR. COGGINS) I'm talking about the United States District Court, Court's acount?

A. What do you mean by account?

Q. The Court's file.

THE WITNESS: I think he needs to be more specific.

MR. BROWN: I don't understand red apple, so I don't know what it is.

Q. (BY MR. COGGINS) Okay. I'll try to be more specific.

Mr. Pierce, you know that the Court received an account on red apple, do you not?

A. That's right. I understood -- well, never mind.

Q. I'm sorry, I didn't mean to cut you off.

A. Go on.

Q. So just as you had a password and you could call up your file, the Court has a password and it could call up its file; is that correct?

A. I presume they treated the Court the same way they did everybody else.

Q. Were you ever given the Court's password?
A. No.
Q. Were you ever allowed to view any Court plans on the screen in the work station?
MR. BROWN: Counsel, what do you mean by a Court plan? Are you talking about what came out in the Court's order of December 24th or are you talking about something different?
MR. COGGINS: I'm talking about a plan being worked on by a law clerk.
THE WITNESS: Answer it?
MR. BROWN: You can if you wish.
A. Yes.
Q. (BY MR. COGGINS) And when did this occur?
A. I think it was on Monday the 23rd.
Q. And where did this occur?
A. At the red apple.
Q. But I mean, there are different work stations. Are you familiar with work stations one, two, three? Can you recall what work station it was?
A. No, I can't because you can enter from one side or the other.
Q. Each of the work stations was a room; is that correct?

A. Right.

Q. And who was in this room with you on December 23rd you talked about?

A. There was an operator. And one of the clerks for the committee -- not the committee but the Court.

Q. Can you recall the name of that clerk?

A. J.D. Munn.

Q. And Mr. Munn is a clerk for whom?

A. Judge Nowlin.

Q. Did you and Mr. Munn go to the work station together?

A. No.

Q. Did you have an appointment to go to the work station on December 23rd, 1991?

A. No.

Q. Who made the appointment to go to the work station on December 23rd, 1991?

MR. BROWN: Don't speculate.

A. I don't know. I presume the Court did.

Q. (BY MR. COGGINS) Did you arrange to meet Mr. Munn at the work station on December 23rd, 1991?

A. I was asked to be there, yes.

Q. Who asked you to be there?

A. The judge.

Q. Was this conversation just between you and Judge Nowlin?

A. As far as I --

Q. When did this conversation take place?

A. On the 23rd.

Q. Was it by telephone?

A. Yes.

Q. Then to your knowledge, you and Judge Nowlin were the only parties to this conversation?

A. Probably. As far as I can recall, that's correct.

Q. What was the substance of this conversation?

A. There was a problem in Bexar County, and they were running on a deadline and wanted to know if it could be corrected.

Q. Okay. To the best extent possible, Mr. Pierce, I'm going to ask you if you can, can you remember what Judge Nowlin said to you in this conversation and what you said to him.

A. It's my understanding that there was an error that had been brought to the Court's attention in the plan that they were drawing, and they requested that I come over there and fix it.

And it had something to do with some missing census tracts or something in part of their plan.

Q. So Judge Nowlin asked you to go over to the work station and meet with his law clerk?

A. And get it fixed. And also there was -- the only way to say it, it was a division of the community interest in the way the clerks had come up with the map for Bexar County in that they had put Alamo Heights and Terrell Hills and all that area in the west side district in district 19, and he wanted that changed.

Q. By "he," Judge Nowlin?

A. Right.

Q. How long was your conversation with Judge Nowlin on the telephone on December 23rd, 1991?

A. I don't recall.

Q. Do you have any estimate at all?

A. It wouldn't have been long.

Q. Do you recall roughly when this conversation took place?

A. Well, I'm trying to think. It had to have been in the morning.

Q. He called you rather than you calling him; isn't that right?

A. Yes.

Q. Do you remember where you were when you received this telephone call from Judge Nowlin?
A. I might have been in my Austin office.
Q. Is that your committee office?
A. Yes.
Q. To your knowledge, were any of the parties to this lawsuit notified by Judge Nowlin that you were going to meet with his law clerk on December 23rd, 1991 at the work station?
A. I do not know.
Q. You have no knowledge that any other parties were notified?
A. I have no knowledge of that at all.
Q. How long were you and J.D. Munn at the work station?
A. It wasn't long. They corrected the problems they had in the map with the missing census tracts, and then I pointed out to them where the Alamo Heights-Terrell Hills area was in San Antonio.
Q. You mean J.D. Munn couldn't find where Alamo Heights is?
A. He is not from San Antonio. He is from Midland.
Q. Was there an operator with you the entire

time that you and Mr. Munn were in the work station together?

A. Yes, that's right.

Q. Can you recall that operator's name?

A. I'm going to tell you just as honest as I can. What I read in the newspapers and everywhere, it was supposedly Tina Hankst, and I can't tell you for sure that I know that's who that was.

Q. Can you recall whether it was a male or female?

A. It was a female.

Q. Can you describe this person to us?

A. Not really. It's dark in there.

Q. Can you recall whether this operator stayed with you and Mr. Munn for the entire time you were working together in the work station?

A. Yes. They never leave.

Q. Was there anybody in the work station other than you, the operator, and Mr. Munn on December 23rd, 1991?

A. I don't recall. I don't think so.

Q. So to the best of your knowledge, there were only three people in that room -- you, J.D. Munn, and the operator?

A. That's correct.